

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PROPOSED
Rule I pertaining to department)	ADOPTION AND AMENDMENT
approval of loan agreement form, and)	
the amendment of ARM 2.59.1505)	NO PUBLIC HEARING
pertaining to examination of deferred)	CONTEMPLATED
deposit lenders)	

TO: All Concerned Persons

1. On June 13, 2011, the Department of Administration proposes to adopt and amend the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on June 3, 2011, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I DEPARTMENT APPROVAL OF LOAN AGREEMENT FORM

(1) For purposes of 31-1-721(2), MCA, department approval of a deferred deposit loan agreement form submitted for review by a licensee or license applicant means the department has verified that the form contains the provisions required under 31-1-721(2) and 31-1-715(5), MCA, and that it does not contain the provisions prohibited under 31-1-723(20), MCA. Department approval of a loan agreement form does not preclude the department from bringing an administrative action against a licensee for an alleged violation of 31-1-723(7), MCA, based in whole or in part on other terms of the loan agreement form. Department approval of a loan agreement form does not constitute a legal opinion concerning the enforceability of the loan agreement in any legal action between the parties to the agreement.

AUTH: 31-1-702, MCA

IMP: 31-1-715, 31-1-721, 31-1-723, MCA

STATEMENT OF REASONABLE NECESSITY: Section 31-1-721(2), MCA, requires that the deferred deposit loan agreement form used by a licensee in its business be one that the department has specified or approved. The department has not specified a single comprehensive loan agreement form that must be used by all licensees because licensees' business models and preferred contract terms will

necessarily vary. The department, however, believes it is important to clarify for licensees and consumers the meaning and effect of its approval of a deferred deposit loan agreement form, and so proposes this rule for that purpose. If this approach were not taken, confusion will likely exist regarding the effect of the department's approval of a loan agreement form. Section 31-1-723(7), MCA, prohibits a licensee from engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit loan. An alleged violation of 31-1-723(7), MCA, will be fact-specific and may be based in whole or in part on loan agreement terms that are not expressly prohibited under 31-1-723(20), MCA, but may nonetheless be unfair, deceptive, or fraudulent.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.59.1505 EXAMINATION OF DEFERRED DEPOSIT LENDERS

~~(1) The department shall annually conduct an examination of each deferred deposit loan licensee's lending operations to ensure compliance with both statute and administrative rule.~~

(2)(1) The An examination of a licensee's lending operations conducted by the department to verify compliance with Title 31, chapter 1, part 7, MCA, and these rules, shall must consist of a comprehensive review of the records, operations, and affairs of the licensee. The review ~~shall~~ must include inquiry into:

- (a) remains the same.
- (b) records of the borrower's's' files including:
 - (i) evidence of required disclosures; and
 - (ii) use of a department-approved loan agreement form; and
- ~~(c)(iii)~~ assurance of continued capital adequacy and bonding.

AUTH: 31-1-702, MCA

IMP: ~~31-1-701~~, 31-1-711, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to delete (1) because it conflicts with 31-1-711(1) and (2)(b), MCA. The statutory requirement for annual examinations was amended from 31-1-711, MCA, by the Legislature in 2007 (SB 165). The continued reference to annual examinations in this rule was recently brought to the department's attention by the legislative auditor's office. The proposed amendment is also needed for housekeeping purposes to insert a serial comma in (2), to correct the form of the plural possessive in (2)(b), and to hyphenate "department-approved" and clarify that the agreement form is approved in (2)(b)(ii). The subsections are renumbered due to the deletion of (1) and because (2)(b)(iii) should be numbered (2)(c). Evidence of continued capital adequacy and bonding in (2)(b)(iii) would not be contained in borrowers' files. Section 31-1-701, MCA, is being deleted from the implementation citations because the rule does not implement 31-1-701, MCA. Finally, to maintain consistency with the rules of statutory drafting, the word "shall" is being replaced with the word "must."

5. Concerned persons may present their data, views, or arguments concerning the proposed action to Lorraine Schneider, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to lschneider@mt.gov; and must be received no later than 5:00 p.m., June 10, 2011.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 5 above at the above address no later than 5:00 p.m., June 10, 2011.

7. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be three persons based on the number of licensed deferred deposit lenders, which is currently 33 as of the publication of this notice.

8. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>x. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State May 2, 2011.